DAVID N. WOLF (6688)
ANDREW DYMEK (9277)
Assistant Utah Attorneys General
OFFICE OF THE UTAH ATTORNEY GENERAL
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100
Facsimile: (801) 366-0101
E-mail: dnwolf@agutah.gov
E-mail: adymek@agutah.gov

Counsel for Defendants

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

EPILEPSY ASSOCIATION OF UTAH, a Utah non-profit corporation; DOUGLAS ARTHUR RICE; TRUCE, a Utah non-profit corporation; CHRISTINE STENQUIST, Plaintiffs, v. GARY R. HERBERT, Governor of the State of Utah, in his official capacity; JOSEPH K. MINER, M.D., MSPH, Executive Director, Utah Department of Health, in his official capacity, Defendants.	**MOTION TO DISMISS** Case No. 180909139 Judge Todd Shaughnessy

MOTION

Defendants Governor Gary Herbert and Dr. Joseph Miner move the Court to dismiss Plaintiffs' Complaint and two claims for relief with prejudice under Rule 12(b)(6) of the Utah Rules of Civil Procedure. This motion is based on the following grounds.

Plaintiffs' first claim for relief alleges the Utah Legislature violated the Utah Constitution when it amended "core" provisions of a medical marijuana law adopted by initiative ("Proposition 2"). This claim for relief fails as a matter of law under the plain language of the Utah Constitution and Utah Supreme Court precedent, which make clear the Utah Legislature has the power to amend and repeal any law, including a law created through the initiative process.

Plaintiffs' second claim for relief is based on a clause of the Utah Constitution that prohibits a union of church and State, and church domination of, and interference in, State functions. Plaintiffs allege that The Church of Jesus Christ of Latter-day Saints (the "Church") violated this clause so as to cause (1) the Governor to call special session and (2) the Utah Legislature to amend Proposition 2. This claim for relief fails as a matter of law because, first, the Church's alleged conduct is constitutionally-protected speech, not constitutionally-prohibited interference or domination and,

second, Plaintiffs have not alleged facts showing causation (and cannot do so).

MEMORANDUM

I. INTRODUCTION

Late last year, the Utah Legislature enacted House Bill 3001 (H.B. 3001), which amended a medical marijuana law adopted by ballot initiative known as Proposition 2. Plaintiffs prefer Proposition 2 to H.B. 3001 on policy grounds,[1] and they want the Court to declare H.B. 3001 unconstitutional and reinstate Proposition 2.

Plaintiffs' constitutional challenges are atypical. Individuals raising a constitutional challenge typically target the terms or impact of a law (through a facial or as applied challenge). Plaintiffs do not.

Plaintiffs challenge is about power and process. The Utah Legislature, Plaintiffs contend, lacked the power to extensively amend Proposition 2 as it did when it enacted H.B. 3001. And Plaintiffs also contend that the legislative process leading up to H.B. 3001's enactment was constitutionally tainted by the Church's alleged domination and interference. Plaintiffs are wrong on both counts.

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[1] *See, e.g.*, Complaint, ¶¶ 34-36.

As interpreted by the Utah Supreme Court, the Utah Constitution provides the Utah Legislature and the people, through the initiative process, equal legislative power. That means the Utah Legislature has the power to amend and repeal laws adopted through the initiative process.

Likewise, Plaintiffs have not alleged facts showing the Church unconstitutionally dominated or interfered with the legislative process. To the contrary, Plaintiffs succeed in showing only that the Church exercised its rights under the First Amendment.

II. LEGAL STANDARD

Although Defendants generally deny the allegations and conclusions in Plaintiffs' complaint, in deciding this motion to dismiss, the Court assumes Plaintiffs' well-pleaded factual allegations are true and interprets those allegations in the light most favorable to Plaintiffs. *Mower v. Baird*, 2018 UT 29, ¶ 5, 422 P.3d 837. But the sufficiency of Plaintiffs' pleadings "must be determined by the facts pleaded rather than the conclusions stated." *Franco v. Church of Jesus Christ of Latter-day Saints*, 2001 UT 25, ¶ 26, 21 P.3d 198. That is, "conclusory allegations in a pleading, unsupported by a recitation of relevant surrounding facts, are insufficient to preclude dismissal or summary judgment." *Chapman v. Primary Children's Hosp.*, 784 P.2d 1181, 1186 (Utah 1989); *Fid. Nat. Title Ins. Co. v. Worthington*, 2015 UT App 19, ¶ 24,

344 P.3d 156 (holding that dismissal under rule 12(b)(6) was appropriate where complaint alleged that defendant "actively participated" in breaches of fiduciary duties, but did not allege any acts in furtherance of those breaches.).

Relatedly, the Court need not accept "extrinsic facts not pleaded" or "legal conclusions in contradiction to the pleaded facts." *Bylsma v. R.C. Willey*, 2017 UT 85, ¶ 10, 416 P.3d 595.

ARGUMENT

I. The Utah Legislature Did Not Violate Article VI, Section 1 of the Utah Constitution when it Enacted H.B. 3001

In their first claim for relief, Plaintiffs allege "Article VI, Section 1 of the Utah Constitution prohibits the Utah Legislature from materially undermining, by repeal or amendment, the core purposes of legislation passed through the initiative process." (Complaint, ¶ 50). Plaintiffs claim the Legislature violated this alleged prohibition when it enacted H.B. 3001. (See id., ¶ 50). Plaintiffs are wrong. The alleged prohibition does not exist as a matter of law.

The plain language of Article VI, Section 1 does not place any limits on the Legislature's power to repeal or amend a law, including a law passed

through the initiative process.[2] Article VI, section 1 states, in relevant part, as follows:

> (1) The Legislative power of the State shall be vested in:
>
> (a) a Senate and House of Representatives which shall be designated the Legislature of the State of Utah; and
> (b) the people of the State of Utah as provided in Subsection (2).
>
> (2)(a)(i) The legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:
>
> (A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute; or
>
> (B) require any law passed by the Legislature, except those laws passed by a two-thirds vote of the members elected to each house of the Legislature, to be submitted to the voters of the State, as provided by statute, before the law may take effect.

Utah Const. art. VI, § 1.

Article VI, section 1 plainly says the "Legislative power" is vested in both the Utah Legislature and the people (through the initiative and

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[2] In their Complaint, Plaintiffs allege the Legislature "radically" amended and "dramatically undermine[d] core purposes of Proposition 2" by passing H.B. 3001. (Complaint, ¶ 4). These and other allegations characterizing the extent to which Proposition 2 was amended are legal conclusions and, for the record, are disputed by Defendants. But even assuming these allegations are accurate, they are irrelevant and ineffective in avoiding dismissal because the Utah Constitution places no limits on the Legislature's power to amend or replace initiated statutes.

referendum process). Utah Const. art. VI, §§ 1, 2. But the plain language of Article VI, Section 1 does not prohibit the Legislature from materially changing legislation passed through the initiative process. *Univ. of Utah v. Shurtleff*, 2006 UT 51, ¶ 30, 144 P.3d 1109, 1117 ("The cardinal rule of constitutional interpretation is to begin with the plain language of the provision in question."); *State v. Gardner*, 947 P.2d 630, 633 (Utah 1997) (stating the Utah Supreme Court looks primarily to the language of the state constitution when interpreting it). In fact, nowhere in article VI, section 1, does one find the words "prohibit," "materially undermining," or "core purposes."

Likewise, Utah appellate courts have not interpreted article VI, section 1 to prohibit the Legislature from materially changing laws passed through the initiative process. Rather, the Utah Supreme Court has interpreted it to mean the Legislature's and the people's legislative power are co-equal, parallel, coextensive, concurrent and share equal dignity. *See, e.g., Carter v. Lehi City*, 2012 UT 2, ¶¶ 22, 27, 269 P.3d 141; *Gallivan v. Walker*, 2002 UT 89, ¶ 23, 54 P.3d 1069.

So, because the Utah Legislature can amend the laws it enacts, it follows under the equal-dignity principle that the Legislature can amend laws enacted through the initiative process too. In other words, because the

"initiative power is parallel to the legislature's power," the "'*laws proposed and enacted by the people under the initiative power* . . . are subject to the same constitutional limitations as other statutes, and *may be amended or repealed by the Legislature at will.*'" *Carter*, 2012 UT 2, ¶ 27 (quoting *Kadderly v. City of Portland*, 44 Or. 118, 74 P. 710, 720 (1903)) (emphasis added); J.E. Macy, Annotation, *Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum*, 33 A.L.R.2d 1118, § 2 (2009) ("Under general constitutional provisions vesting the legislative power of the state in a legislature but reserving to the people the right of initiative and referendum, there is no superiority of power as between the two. . . . In the absence of special constitutional restraint, either may amend or repeal an enactment by the other."); Norman Singer, 1A *Sutherland Statutory Construction* (7th ed.) § 23:24 (stating that initiative measures "have the same status as ordinary acts of the legislature except where the Constitution" provides otherwise).

Contrary to the Utah Supreme Court's interpretation in *Carter* and these persuasive authorities, Plaintiffs' interpretation of Article VI, Section 1 elevates voter-approved initiatives to essentially constitutional status where they would remain unamendable and untouchable by normal legislative action. But there is no legal support for Plaintiffs' interpretation.

Because the Utah Legislature did not violate Article VI, Section 1 by enacting H.B. 3001, Plaintiffs' first claim for relief fails, as a matter of law.

II. The Enactment of H.B. 3001 Did Not Violate the Anti-Domination Clause of the Utah Constitution

1. Plaintiffs have not alleged facts showing the Church violated the Anti-Domination Clause

In their second claim for relief, Plaintiffs claim that the enactment of H.B. 3001 violated a clause (the "Anti-Domination Clause") of the Utah Constitution that provides: "There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions." Utah Const. art. I, § 4. The Court should dismiss Plaintiffs' second claim for relief because Plaintiffs have failed to allege facts showing a violation of the Anti-Domination Clause.

As interpreted by the Utah Supreme Court, the Anti-Domination Clause is "a particularistic command directed at the Mormon Church as an institution and was intended to forever bar the sort of *theocracy* that existed in the early days of the State of Deseret by preventing that church, or any other church as an institution, from 'interfer[ing]' directly in or 'dominat[ing]' state government." *Society of Separationists, Inc. v. Whitehead*, 870 P.2d 916, 939 (Utah 1993) (emphasis added). The Anti-Domination Clause "applies

only to circumstances that join a particular religious denomination and the state so that the two function in tandem on an ongoing basis." *Id.*

Plaintiffs have not alleged facts showing that the Church functioned as *theocracy* or in tandem with the State on an *ongoing basis* or that it dominated or directly interfered with state government. To the contrary, the facts alleged show that the Church, for a limited period of time, simply exercised its constitutional right to engage in free speech on a single matter of public interest (medical marijuana legislation).

In this regard, Plaintiffs allege that Church leaders "made clear they would 'call[] upon our Legislature and local leaders' to 'quickly find an appropriate resolution'" and, "before passage of Proposition 2, announced the Church's 'hope' for a 'special session by the end of the year' and that "[the Church] is working to find responsible legislation.'" (Complaint, ¶ 9). By calling upon the Legislature to find an appropriate solution and expressing the "hope" for a special session, the Church was neither dominating the State nor interfering with its functions. The Church was simply expressing its views and desires on a matter of public interest, as any person or group has the right to do. *Snyder v. Phelps*, 562 U.S. 443, 451-52 (2011) ("Speech on matters of public concern is at the heart of the First Amendment's protection.") (cleaned up); *id.* at 452 (stating "speech on public issues occupies

the highest rung of the hierarchy of First Amendment values, and is entitled to special protection"); *see Society of Separationists*, 870 P.2d at 934 (rejecting a construction of article I, section 4 that would "evidence an affirmative hostility toward religion, hostility that is not only inconsistent with our history . . ., but also probably impermissible under the Free Exercise Clause of the First Amendment to the United States Constitution" and "might separately implicate federal free speech rights.").

The same holds true for the allegation that the Church announced it was working to find appropriate legislation. As an aside, Plaintiffs do not allege that the Church later proposed "appropriate legislation" or lobbied for any particular changes to Proposition 2. But even if it did, proposing or lobbying for legislation would not amount to domination of, or interference with, the State. A religious group, like any person or entity, has a constitutional right to propose and even lobby for appropriate legislation. "It would be a severe infringement on the free speech rights of those persons or groups with religious views to forbid them from lobbying their local government or, if allowed to lobby, to require them to leave their religious beliefs and convictions at the steps of city hall." *Cathy's Tap, Inc. v. Village of Mapleton*, 65 F. Supp. 2d 874, 892 (C.D. Ill. 1999) (noting that the "Court has not found any case in which the successful lobbying efforts of religious

organizations or individuals invalidates a legislative enactment under the Establishment Clause."); *see Society of Separationists*, 870 P.2d at 934.

Plaintiffs' other allegations likewise fail to show a violation of the Anti-Domination Clause. In paragraph 21 of the Complaint, Plaintiffs allege that on June 7, 2018, Marty Stephens, a former Speaker of the Utah House of Representatives and current Church Director of Community and Government Relations, wrote an email to two of the Plaintiffs and others. Focusing on the facts alleged, as opposed to the conclusions and rhetoric stated, the gravamen of paragraph 21 is that Mr. Stephens stated the Church opposed Proposition 2 and would not accept the result if it passed; predicted a costly and "long political and legislative fight . . . if we cannot find some room to work together" and, to that end, proposed private meetings arranged and potentially hosted by the Church "involv[ing] elected officials, the medical association, and other community groups"; suggested that the ideas of the Church and others at these meetings would be used as a substitute for the ideas in Proposition 2 and to show it was not needed; and stated that "things [are] organizing behind the scenes that will make compromise difficult in the" near future. (Complaint, ¶ 21).

In other words, Mr. Stephens's email voiced the Church's opposition to Proposition 2; invited various stakeholders to attend private meetings in the

hopes of reaching a negotiated compromise that would serve as a substitute to Proposition 2; and stated that a long and costly political fight would result if a compromise was not reached. (*Id.*).

These allegations do not show a union between Church and State, or domination or interference by the Church in the State. To the contrary, it shows the opposite. If the Church dominated the State, it would not seek to negotiate with Plaintiffs and others holding different views in the hope of reaching a compromise. It wouldn't have to. At best, Paragraph 21 shows that the Church assertively exercised its constitutional rights to voice its opposition and advocate for an alternative to Proposition 2.

Equally ineffective are Plaintiffs' allegations that Church leaders urged Church members to vote against Proposition 2, (Complaint, ¶¶ 9, 22, 23), and "[m]embers of the Church are directed by the Church to always trust and follow the words and directions of the President of the Church, who caused other leaders of the Church to instruct members of the Church to oppose Proposition 2." (Complaint, ¶¶ 9, 23). Urging Church members to vote against Proposition 2 is simply free speech.

Further, the vote for Proposition 2 occurred separately from the vote for H.B. 3001. So, even assuming the Church somehow violated the Anti-Domination Clause by urging members to vote against Proposition 2, that

does not show the Church violated the Anti-Domination Clause with respect to the later enactment of H.B. 3001, as alleged in the second claim for relief.

And, despite the urging of Church leaders and the fact that approximately 62.9 % of Utah's population are members of the Church (as of late 2016), (Complaint, ¶ 24), Proposition 2 was adopted. (*Id.* at ¶ 24). The adoption of Proposition 2 in the face of the Church's opposition contradicts Plaintiffs' theory that Church dominates the State in secular matters.

Because Plaintiffs have failed to allege facts showing the Church violated the Anti-Domination Clause, their second claim for relief fails as a matter of law.

2. Plaintiffs have failed to allege facts showing the alleged violation of the Anti-Domination Clause caused H.B. 3001 to be enacted

Even if the facts alleged were sufficient to show the Church violated the Anti-Domination Clause, Plaintiffs would still have to show the violation caused Governor Herbert to "call a special session of the Utah Legislature" and further caused the Utah Legislature to "vote[] in favor of H.B. 3001." (Complaint, ¶ 56). But they haven't and they can't. Because Plaintiffs have not alleged and cannot allege facts showing causation, their second claim for relief fails, as a matter of law.

a. Plaintiffs have failed to sufficiently plead causation

Plaintiff have not alleged facts showing causation. As discussed earlier, the alleged interference and domination is in the form of speech (e.g, speech opposing Proposition 2, expressing the hope for a special session). But Plaintiffs have not alleged facts showing that the Church's alleged speech caused the Governor to call the special session or a majority of the Legislature to vote for H.B. 3001. Plaintiffs have not even alleged that the Governor or a majority of the Legislature heard, let alone were persuaded by, the Church's call for an "appropriate resolution," expressed "hope" for a special session, or other communications.

To the contrary, Plaintiffs allege that as early as "March of 2018," Governor Herbert campaigned publicly against Proposition 2. (Complaint, ¶ 9). But "June 7, 2018" is the earliest date of an alleged Church communication opposing Proposition 2. (*Id.*, ¶ 21). Thus, the allegations in the Complaint show the Governor was out in front on this issue and formed his views in opposition to Proposition 2 before the views later expressed by the Church.

Likewise, although Plaintiffs' allegations regarding legislators are scant, the few that exist do not establish causation. To the contrary, Plaintiffs allege that Representative Nelson stated at the special session that

the Legislature has the right to modify an initiative where "legislators judge it to be necessary," (Complaint, ¶ 31), suggesting the vote to enact H.B. 3001 was the result of the independent judgment of legislators, and not the domination or interference of the Church.

b. Judicial review of gubernatorial and legislative motivation violates separation of powers

As already noted, Plaintiffs allege, in conclusory terms, that Governor Herbert called the special session as a result of the Church's alleged domination of the State and interference with its functions. (Complaint, ¶ 56). Apparently, Plaintiffs' theory is that the Church's alleged domination and interference somehow influenced and motivated Governor Herbert to call the special session.

Yet, even assuming the truth of these allegations, they are legally irrelevant to the question of whether the calling of the special session violated the Utah Constitution. Under the plain language of the Utah Constitution, the Governor has the constitutional authority to call a special session of the Utah Legislature on "extraordinary occasions." Utah Const. art. VII, § 6(1)(a). The only constitutionally relevant question, then, is whether the occasion was extraordinary. As long as it was, the Governor properly called the special session; his subjective motivation for doing so is

constitutionally immaterial. *Cf. Moreaux v. Ferrin*, 100 P.2d 560, 564 (Utah 1940) (noting that questioning the motives of the governor demanding extradition "would be destructive of and subversive of the clear intent and meaning of the Federal Constitution to allow it to be done" regardless of motive or "ulterior purpose.").

Besides, the Governor's decision to call a special session is not subject to judicial review under the separation of powers doctrine. In *Herzberger v. Kelly*, the Illinois Supreme Court addressed a substantively identical provision of the Illinois Constitution of 1870, which allowed the governor, on "extraordinary occasions," to call a special session of the legislature. 7 N.E.2d 865, 865-66 (Ill. 1937).

The Governor's decision to call a special session, reasoned the *Herzberger* court, must be "deemed final" because it was a decision vested solely in the Governor by the state constitution. *Id.* at 666. Thus, "[n]o authority to review the exercise of the discretionary power in the Governor by the Constitution was, by that instrument, seated in the judiciary." *Id.* at 866 (quoting *Marbury v. Madison*, 1 Cranch 137, 166, 2 L.Ed. 60 (1803). Because the Governor had absolute discretion in deciding whether an "extraordinary occasion" existed authorizing a special session, the court held that the law

passed at that special session was constitutionally enacted. *Id.* at 867. As the *Herzberger* court put it, because the Governor

> possesses the authority to convene the General Assembly in special session at any time when, in the exercise of his official discretion, he deems the occasion warrants such action, it must follow as a necessary corollary that any laws regularly passed at such special session so convened, which are within the purposes expressed in the proclamation calling it, are impervious to the attack of want of legal sanction in their enactment.

Id. at 831.

Applying the same principle, the court in *Gevendan v. Commonwealth*, 142 S.W.3d 170 (Ky. Ct. App. 2004), declined to compel the governor to call the legislature into executive session to consider a budget bill. Like the Utah Constitution, the Kentucky Constitution provides that the Governor "may, on extraordinary occasions, convene the General Assembly[.]" Id. at 172 n.4. The court held that the separation of powers doctrine did not "permit a court to interfere with the Governor's exercise of this discretion" to call a special session. *Id.* at 172.

These cases reflect the separation-of-powers principle that the "governor, as the chief executive officer of a state, is vested with the largest measure of executive discretion in the exercise of which the governor may not be controlled by the courts." 16 C.J.S. Constitutional Law § 434. Thus, "the

discretion of the governor is absolute and free from judicial control when making a variety of determinations under constitutional authority, such as determining whether an occasion exists for an extra session of the legislature." *Id.*

Utah adheres to the separation of powers doctrine. *See* Utah Const. art. 5, § 1 (stating "no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted."); *Chez ex rel. Weber Coll. v. Utah State Bldg. Comm'n*, 74 P.2d 687, 692 (Utah 1937) ("The Governor has exercised his discretion in making effective the legislative preference as plainly indicated by the wording of the statute. Neither the building commission nor this court has power to control the action of the Governor within the authority given him by the Legislature.").

Under the Utah Constitution, the authority to call a special session is solely within the province of the Governor, as chief executive. Thus, the Governor's decision to call a special session is not subject to judicial control or review, and H.B. 3001 is not in turn subject to judicial review and nullification on the alleged ground that he lacked a constitutionally sufficient reason to call the special session. *Farrelly v. Cole*, 56 P. 492, 498 (Kan. 1899)

(stating the "doctrine that a mistake, or even corruption, on the part of the governor in convening the general assembly, invalidates the acts of that body, would be productive of incalculable mischief").

Even if the Governor's decision to call a special session is subject to judicial review, Plaintiffs do not allege that an extraordinary occasion did not exist when Governor Herbert called a special session. To the contrary, the general tenor of Plaintiffs' complaint is that the occasion *was* extraordinary. *Herzberger*, 7 N.E.2d at 866 (stating the term "extraordinary occasions" has not "been construed as synonymous with urgent necessity" but rather, "by settled usage and custom," means whatever the governor "deem[s] of importance for the welfare of those he serves.").

The occasion was extraordinary as that term has historically been understood in the context of a special session. Proposition 2 expanded existing Utah law on medical cannabis by, among other things, authorizing, for the first time, private facilities to grow and sell medical cannabis and expanding the group of people eligible to receive it.[3] Medical marijuana bills expanding existing law had been defeated in Utah in 2015 and 2016. (Complaint, ¶ 9). And whether and how to permit the use of medical

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[3] *See* elections.utah.gov/Media/Default/2018%20Election/Issues%20on%20the%20Ballot/Postings/Proposition%202.pdf (Impartial Analysis).

marijuana was a matter of some controversy, with people of good faith on both sides of the debate. Plaintiffs and others use cannabis to obtain relief from pain and other conditions. (*Id.*, ¶¶ 7-8). But, marijuana had historically been treated as a controlled substance in Utah because it is still considered a Schedule I controlled substance under federal law, which means it currently has "no accepted medical purpose" in the view of Congress. *Green Sol. Retail, Inc. v. United States*, 855 F.3d 1111, 1114 (10th Cir. 2017). And there remains considerable legal and popular opposition to the use of marijuana for non-medical purposes.

Further, the initiative process gave Utahns only an up-or-down vote on Proposition 2. That is, voters had to choose between Proposition 2 and nothing and, by just over a 5% margin, they chose Proposition 2. The fact that Proposition 2 passed with a simple majority does not mean it could not be improved (or that voters would have chosen Proposition 2 over H.B. 3001 if they had that option). Many of the people's representatives in the Legislature believed it could be improved. (Complaint, ¶ 31). Given the novelty of medical marijuana laws to Utah, and the public health and public safety issues at stake, the "occasion" was "extraordinary," and a special session was constitutionally justified.

Plaintiffs also allege that the Church's domination of the State and interference with its functions caused the Utah Legislature to "vote[] in favor of H.B. 3001 to amend the Initiative Statue and materially defeat numerous core provisions of Proposition 2." (Complaint, ¶ 56). Even if Plaintiffs alleged facts sufficient to support this conclusory allegation (which they did not), Plaintiffs would still fail to state a claim entitling them to the relief they request, i.e., an order invalidating H.B. 3001.

Like the Governor's motives in calling the special session, the motives of the Legislature in voting in favor of H.B. 3001 are not subject to judicial review. *Thomas v. Daughters of Utah Pioneers*, 197 P.2d 477, 499 (Utah 1948) (stating "it is not within the province of the judiciary to question the wisdom or the *motives* of the Legislature in the enactment of a statute" (emphasis added)); *see generally Abilene Retail No. 30, Inc. v. Bd. of Comm'rs of Dickinson Cty.*, 492 F.3d 1164, 1172 (10th Cir. 2007) (stating courts will "not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive."); *East High Gay/Straight All. v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 81 F. Supp. 2d 1199, 1203 (D. Utah 1999) (holding individual school board members' motives and justifications for adopting policy were irrelevant and therefore not discoverable). "It must be assumed that the legislative department, whose members pledged

themselves by oath to support the Constitution, has not lightly disregarded that pledge." *Thomas*, 197 P.2d at 499.

Even in cases involving allegations of "sweeping legislative corruption" courts have "grave doubts concerning judicial inquiry into legislators' motives." *East High*, 81 F.Supp. 2d at 1204 (citing *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 3 L.Ed. 162 (1810)). These grave doubts arise not only from separation of powers principles, but also intractable pragmatic difficulties inherent in determining the motives of a multi-member legislature. *Id.* ("Inquiry into the personal motivations of individual legislators proves to be 'a hazardous matter,' problematic at best." (*quoting United States v. O'Brien*, 391 U.S. 367, 383 (1968)).

And H.B. 3001 is content-neutral with respect to religion and is not alleged to have the effect of discriminating based on religion. Thus, there is no justification for intruding into the Legislature's deliberations and motivations in enacting H.B. 3001. *Id.* at 1204 ("Absent some disparate impact or other illicit consequence, however, scant justification exists for intruding into the deliberations of another branch of government.").

CONCLUSION

For the foregoing reasons, the Court should grant Defendants' motion to dismiss and dismiss Plaintiff's Complaint and causes of action with prejudice.

DATED: April 22, 2019.

OFFICE OF THE UTAH ATTORNEY GENERAL

/s/ Andrew Dymek
DAVID N. WOLF
ANDREW DYMEK
Assistant Utah Attorney General
Counsel for Defendants